IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.613/2002

The State of Maharashtra ...Appellant.

V/s

Dayanand Tukaram Raut and Ors. ...Respondents. --

Mr. B.R. Patil Acting Public Prosecutor for the appellant

Mr. C.S. Patil h/f Sunil Kumar Rathore for respondent Nos. 1 and 3

Ms. Shradha Y. Mohite for respondent No.2.

CORAM: V.M.KANADE,J.

DATE: 20th September, 2004.

PC:.

1. Heard the learned Acting Public Prosecutor appearing on behalf of the appellant - State and the learned Counsel for the respondents.

2. Appellant - State has filed an appeal against the Judgment and Order passed by the Judicial Magistrate, First Class, Railway Court, Pune in R.C.C. No.5040 of 1983. Initially, the charge was framed against the three accused. The accused No.1 was a cleaner and accused No.2 was the driver. The accused No.3 against whom the main charge was framed, however, died during the tendency of the trial. Thereafter, his son was made an accused on the ground that the property was

found in his house. The Trial Court observed that most of the witnesses have turned hostile. The seizure panchanama also was not proved. Similarly, other witnesses have not implicated the son of the deceased. The Trial Court, therefore, observed that merely the property was found in possession of the son of the deceased, it was not sufficient to prove the charge against him in the absence of proof of seizure panchanama. Under these circumstances, the Trial Court acquitted the accused.

3. I have perused the judgment and order of the Trial Court as also the grounds of appeal. In my view, the finding of the Trial Court is not unreasonable. The finding of the Trial Court that most of the witnesses have turned hostile and that the seizure panchanama is not proved also is not disputed. The main accused has expired and the charge is framed against his son. Order of the Trial Court, under these circumstances, is not unreasonable. Delay in filing the appeal is condoned. However, leave is refused. Appeal is dismissed.

V.M. KANADE, J.